

Agenda

Item #3



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: January 9, 2013

Re: Request for Waiver of Late-Filing Penalty by Rep. Kenneth Wade Fredette

Rep. Kenneth Wade Fredette was running for re-election last year to the Maine House of Representatives, District 25 (Newport and nearby communities). He works as an attorney in Newport. His campaign was required to file a campaign finance report by 11:59 p.m. on December 18, 2012, the forty-second day after the general election. His campaign filed the report roughly 7 ½ hours late the next morning. Based on the amount of financial activity in the report and the number of days late, the preliminary penalty amount is \$31.99. Rep. Fredette is requesting a waiver of the penalty through a letter dated December 27, 2012.

Candidates may ask for a waiver of a late penalty, based on a number of mitigating circumstances. Rep. Fredette relies on two of the circumstances, set out in paragraph (2)(A) and (D)

The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; ... or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

Rep. Fredette is a traditionally financed candidate who is required to report both contributions and expenditures. He explains that his campaign relies on his legal assistant for help with record-keeping and financial reporting. Her husband had two knee replacement surgeries on November 19, 2012 and a date shortly thereafter:

Post-surgery recovery has also required that she provide constant care at home for a significant period of time following the first surgery. Unfortunately, as she *prepared* for the surgery, much work in the office and the campaign became a much more difficult and complex task to achieve. In the end, the drafting of the filing of the Campaign Finance Report was completed prior to the 18th, however, one issue remained outstanding which I could not verify without her assistance. I believed it was important to file an accurate report which reflected the correctness of this issue which was able to be clarified on the morning of the 19th, at which time immediately thereafter, I filed the report.

Rep. Fredette argues that these facts qualify as “other circumstances ... that warrant mitigation of the penalty” and also as a valid emergency. (21-A M.R.S.A. § 1020-A(2))

On the morning of December 19, 2012, Rep. Fredette sent me an e-mail at 7:37 a.m. apologizing that he had filed the report late, and explaining that he had been waiting for some information from his assistant whose husband had been preparing for and having an operation.

Please note that Rep. Fredette is not arguing that the penalty is disproportionately high compared to the harm to the public or other factors, which is the basis for many requests you receive. Rather, he is arguing that he intended to file on time, prepared the report in advance of the deadline, but was hampered by the unavailability of his secretary to verify one issue in the report.

Staff Recommendation

Rep. Fredette has run for political office as a legislative candidate in four election years. He has filed over twenty campaign finance reports. He has not been late previously.

The “other circumstances” factor provided by the Legislature pre-dates the current employees of the Commission. It appears to be a catch-all provision that authorizes the Commission to reduce a late-filing penalty when warranted by surrounding circumstances – provided that the candidate has demonstrated that he or she made a “bona fide effort” to file on time.

In light of Rep. Fredette’s high rate of filing on time and his representation in writing that he had prepared the report in advance of the deadline, the Commission staff is inclined to believe that Rep. Fredette entered the information in the online reporting form prior to deadline of 11:59 p.m. on December 18 and made a “bona fide effort” to file on time.

We also find it credible that the circumstances of the knee surgeries was the actual cause of the lateness. If a political campaign and small law office relies on a single individual

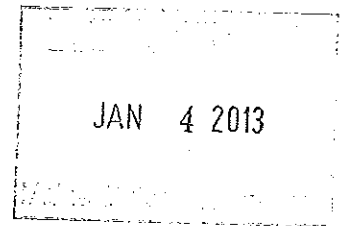
who is unavailable for medical reasons within her family, that can interfere with normal record-keeping procedures.

If you are persuaded that these circumstances merit a reduction in the penalty, you could reduce the penalty to an even \$20, or \$18 (a 50% reduction). We would not recommend a complete waiver because – even under the challenging circumstances described – it is *possible* that the report could have been filed on time if communication with the assistant had been initiated earlier. It is not clear from the description provided.

The Commission staff recognizes that the two surgeries presented serious challenges for the family, the law office, and the campaign. Nevertheless, we are not sure if these qualify as an “emergency,” which usually means an unforeseen or urgent event.

Thank you for your consideration of this agenda item.

Kenneth W. Fredette
P.O. Box 70
Newport, Maine 04953
207-368-5562



December 27, 2012

Mr. Tyler Backus, Candidate Registrar
State of Maine
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Re: Late 42-Day Post-General Campaign Finance Report Due 12/18/2012
Representative Kenneth W. Fredette, House District 25

Dear Mr. Backus:

The purpose of this letter is to seek a waiver of the penalty for the late filing of my Campaign Finance Report due on 12/18/2012. The Report was filed on December 19, 2012 in the morning, less than eight (8) hours late.

The purpose of this letter is not to pay the \$31.99 penalty simply because of the late filing, but to explain the circumstances for the late filing and therefore, the waiving of the penalty.

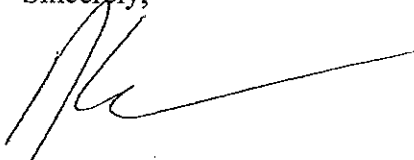
I submit the following as mitigating circumstances under the Election Law of (1) a valid emergency and (2) relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements. To that end, my secretary and only person who works for my office, has assisted in the accounting and reporting of the campaign finance reports. Unfortunately, her husband, a farmer, was recently notified that he must have not one, but two, knee replacement operations. Therefore, my office has been working to accommodate her schedule which required that she be in Portland, Maine, for the first of these two operations on the 19th of November and the second to follow shortly thereafter. Post-surgery recovery has also required that she provide constant care at home for a significant period of time following the first surgery. Unfortunately, as she *prepared* for the surgery, much work in the office and the campaign became a much more difficult and complex task to achieve. In the end, the drafting of the filing of the Campaign Finance Report was completed prior to the 18th, however, one issue remained outstanding which I could not verify without her assistance. I believed it was important to file an accurate report which reflected the correctness of this issue which was able to be clarified on the morning on the 19th, at which time immediately thereafter, I filed the report. Thus, I do believe the circumstances of the knee operation and required issues related thereto, and the immediate filing of the Report as soon as the information could be verified, fall into the mitigating circumstances and valid emergency clauses provided for in our Election Law. You

will also note that other filings were done in a timely manner.

In conclusion, please accept this letter as my request of the waiver of the late filing penalty of \$31.99 as falling within the clauses identified above.

Thank you in advance for your time and consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to be 'K. Fredette', with a long horizontal stroke extending to the right.

Kenneth W. Fredette,
Candidate



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

December 21, 2012

BY CERTIFIED MAIL AND REGULAR MAIL

Hon. Kenneth Fredette
PO Box 70
Newport, ME 04953

Re: Late 42-Day Post-General Campaign Finance Report Due 12/18/2012

Dear Representative Fredette:

Preliminary penalty amount. You filed a 42-Day Post-General campaign finance report on 12/19/2012. Under the Election Law, the Commission must calculate a preliminary penalty for the late filing, based on the amount of financial activity during the report period, the number of days the report was filed late, and the candidate's filing record. The preliminary penalty for the late filing of your report is \$31.99. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement within 14 days of receiving this letter. Please do not use Maine Clean Election Act funds to pay the penalty.

Requesting a waiver. You may ask the members of the Ethics Commission to waive the preliminary penalty due to mitigating circumstances (defined below). To request a waiver, please send a letter within 14 days of receiving this notice that contains a full explanation of the reasons you filed late. If you request a waiver, the Commission staff will notify you of the date and time of the public meeting at which the Commissioners will consider your request. You or a person you designate may appear at the meeting. The Commission staff will notify you of the Commissioners' decision shortly afterward.

Mitigating circumstances. The Election Law defines mitigating circumstances as: (1) a valid emergency, (2) an error by the Commission staff, (3) failure to receive notice of the filing deadline, or (4) relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements. Also, the Commission may waive a preliminary penalty if the Commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer, or campaign staff, or the harm suffered by the public from the late disclosure.

Please call me at 287-4179 if you have any questions.

Sincerely,

Tyler Backus
Candidate Registrar

cc: Joshua Tardy (by regular mail)

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

December 21, 2012

Hon. Kenneth Fredette
PO Box 70
Newport, ME 04953

The Commission staff has calculated a preliminary penalty of \$31.99 for the late filing of your 42-Day Post-General campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

To pay the penalty, submit a check or money order to the address below, along with the bottom half of this letter. Or, please pay online using a credit or debit card at the web address listed below. If you would like to request a waiver of the preliminary penalty, please see the instructions included in the attached letter.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay a late-filing penalty. If you have questions, please call Tyler Backus at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Hon. Kenneth Fredette

RE: Penalty for late filing of 42-Day Post-General Campaign Finance Report

Penalty ID: 1973

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4-A)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

| | |
|--------------|--|
| \$2,500 | Greater amount of the total contributions received or expenditures made during the filing period |
| <u>X .01</u> | Percent prescribed for first violation |
| \$25.00 | One percent of total contributions |
| <u>X 2</u> | Number of calendar days late |
| \$50.00 | Total penalty |

Kenneth Fredette

Your penalty is calculated as follows:

| | |
|------------------------|--------------------|
| Receipts/Expenditures: | \$ <u>3,199.66</u> |
| Percent prescribed: | <u>1%</u> |
| | \$ <u>32.00</u> |
| Number of days late: | X <u>1</u> |
| Total penalty accrued: | \$ <u>31.99</u> |

A penalty begins to accrue on the day following the due date of the report.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES 21-A M.R.S.A. Section 1020-A(5-A)

\$5,000 for reports required to be filed 42 days before an election,
11 days before an election, 42 days after an election, and for 24-hour reports;
\$1,000 for semiannual reports.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

2012 CAMPAIGN FINANCE REPORT

FOR PRIVATELY FINANCED CANDIDATES

| CANDIDATE | | |
|--|------------|--|
| KENNETH W. FREDETTE PO BOX 70 NEWPORT, ME 04953 OFFICE SOUGHT: REPRESENTATIVE COUNTY: -NONE- DISTRICT: 25 | | TEL: (207)368-5562 FAX: (207)368-5562 E-MAIL: fredlaw@myfairpoint.net |
| TREASURER | | |
| JOSHUA TARDY 159 MAIN ST NEWPORT, ME 04953 | | TEL: (207)341-5858 FAX: (207)368-2822 E-MAIL: |
| TYPE OF REPORT | DUE DATE | REPORTING PERIOD |
| 42-DAY POST-GENERAL | 12/18/2012 | 10/24/2012 - 12/11/2012 |
| NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES A1, C, D | | |
| CERTIFICATION | | |
| <p>I, KENNETH WADE FREDETTE, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.</p> <p>REPORT FILED BY: KENNETH WADE FREDETTE ON BEHALF OF JOSHUA TARDY, TREASURER</p> <p>REPORT FILED ON: 12/19/2012</p> <p>IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE CANDIDATE, THE CANDIDATE, TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.</p> | | |

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information. 2,012
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Total contributions (cash and in-kind) from the same source (except the candidate and candidate's spouse or domestic partner) may NOT exceed \$350 in any election for legislative candidates, \$750 for county candidates, or \$1500 for gubernatorial candidates. For party candidates, the primary and general elections are considered separate elections. For non-party candidates, there is only one election, the general election.
- Contributor Types:

| | |
|---|--|
| 1 = Candidate and Candidate's Spouse/Domestic Partner | 5 = Political Party Committees |
| 2 = Other Individuals | 6 = Other Candidates and Committees |
| 3 = Commercial Sources (corporations, etc.) | 7 = (This type not applicable to privately financed candidates.) |
| 4 = Political Action Committees | 8 = Contributors Giving \$50 or Less |
| | 9 = Transfer from Previous Campaign |

| DATE RECEIVED | CONTRIBUTOR | OCCUPATION AND EMPLOYER | TYPE | ELECTION | AMOUNT |
|---------------|---|--|------|----------|----------|
| 10/26/2012 | MEL NEWENDYKE 84 SMALL ROAD LITCHFIELD, ME 04350 | RETIRED/LEGISLATOR RETIRED/LEGISLATOR | 2 | General | \$100.00 |
| 10/26/2012 | PENOBSCOT COUNTY REPUBLICAN COMMITTEE P.O. BOX 1734 BANGOR, ME 04402 | | 5 | General | \$200.00 |
| 10/26/2012 | ROGER KATZ 227 WATER ST. AUGUSTA, ME 04330 | ATTORNEY/LEGISLATOR LIPMAN AND KATZ | 2 | General | \$200.00 |
| 10/26/2012 | KATHY WATSON 161 MAPLE TERRACE PITTSFIELD, ME 04967 | RETIRED RETIRED | 2 | General | \$250.00 |
| 10/26/2012 | ALTRIA 6601 W BROAD STREET RICHARD, VA 23230 | | 3 | General | \$350.00 |
| 10/26/2012 | DONALD REYNOLDS P.O. BOX 131 NEWPORT, ME 04953 | RETIRED TEACHER RETIRED | 2 | General | \$25.00 |
| 11/01/2012 | DALE THISTLE P.O. BOX 160 NEWPORT, ME 04953 | ATTORNEY LAW OFFICE OF DALE THISTLE | 2 | General | \$200.00 |
| 11/05/2012 | AVERY DAY MERRILL'S WHARF, 254 COMMERCIAL ST PORTLAND, ME 04101 | ATTORNEY PIERCE ATWOOD | 2 | General | \$100.00 |
| 11/06/2012 | STEVE WINTLE 46 FIREFLY LANE DEXTER, ME 04930 | CONSULTANT GEOTHERMAL OF MAINE | 2 | General | \$50.00 |
| 11/07/2012 | CAMPAIGN MARKETING STRATEGIES, INC. 125 N. OAKLAND STREET ARLINGTON, VA 22203 | | 3 | General | \$22.23 |

TOTAL CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION ⇨

TOTAL CASH CONTRIBUTIONS FOR THE GENERAL ELECTION ⇨

| |
|------------|
| |
| \$1,497.23 |

**SCHEDULE B
EXPENDITURES**

| EXPENDITURE TYPES | | | | |
|-------------------|---|---|--|--|
| CNS | Campaign consultants | POL | Polling and survey research | |
| CON | Contribution to other candidate, party, committee | POS | Postage for U.S. Mail and mail box fees | |
| EQP | Equipment (office machines, furniture, cell phones, etc.) | PRO | Other professional services | |
| FND | Fundraising events | PRT | Print media ads only (newspapers, magazines, etc.) | |
| FOD | Food for campaign events, volunteers | RAD | Radio ads, production costs | |
| LIT | Print and graphics (flyers, signs, palmcards, t-shirts, etc.) | SAL | Campaign workers' salaries and personnel costs | |
| MHS | Mail house (all services purchased) | TRV | Travel (fuel, mileage, lodging, etc.) | |
| OFF | Office rent, utilities, phone and internet services, supplies | TVN | TV or cable ads, production costs | |
| OTH | Other | WEB | Website design, registration, hosting, maintenance, etc. | |
| PHO | Phone banks, automated telephone calls | Only these expenditure types require a remark: CNS, EQP, FND, OTH, PRO, SAL, TRV. | | |

| DATE OF EXPENDITURE | PAYEE | REMARK | TYPE | AMOUNT |
|---------------------|---------------------------|------------------------|------|------------|
| 10/31/2012 | ROLLING THUNDER EXPRESS | | PRT | \$605.54 |
| 10/31/2012 | BANGOR DAILY NEWS | | PRT | \$595.00 |
| 11/02/2012 | AMERICAN STRATEGIES | | RAD | \$1,400.00 |
| 11/13/2012 | KENNETH FREDETTE | Sign-Pickup | LIT | \$65.94 |
| 11/21/2012 | KENNETH FREDETTE | | LIT | \$65.94 |
| 12/07/2012 | DEBRA BRADSTREET | Mailings | LIT | \$100.00 |
| 11/07/2012 | COUNTRY SIDE RESTAURANT | Pick up Signs-Meal | LIT | \$25.00 |
| 11/07/2012 | PHIL HAM | Sign Pickup Assistance | LIT | \$100.00 |
| 10/31/2012 | GREAT AMERICAN RESTAURANT | | FOD | \$32.71 |

| | | | | |
|----------------------|---------------------|----------------------------|-----|------------|
| 11/05/2012 | DEBRA BRADSTREET | Meal Fundraiser/Assistance | FND | \$125.00 |
| 11/06/2012 | MARRIOTT/KENNETH W. | Election Night Activities | TRV | \$84.53 |
| TOTAL EXPENDITURES ⇒ | | | | \$3,199.66 |

**SCHEDULE F
SUMMARY SCHEDULE
(PRIVATELY FINANCED CANDIDATES)**

| CASH ACTIVITY | | |
|---|------------------------------|---------------------------|
| RECEIPTS | TOTAL FOR THIS PERIOD | TOTAL FOR CAMPAIGN |
| 1. CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION (Schedule A) | \$0.00 | \$350.00 |
| 1A. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION (Schedule A) <i>For party candidates, general election contributions will only appear on this line after the primary.</i> | \$1,497.23 | \$14,077.23 |
| 2. OTHER CASH RECEIPTS (interest, etc.) | \$0.00 | \$0.00 |
| 3. LOANS (Schedule C, new loans and additional amounts loaned) | \$0.00 | \$600.00 |
| 4. TOTAL RECEIPTS (lines 1+2+3) | \$1,497.23 | \$15,027.23 |
| EXPENDITURES | | |
| 5. EXPENDITURES (Schedule B) | \$3,199.66 | \$10,070.10 |
| 6. LOAN REPAYMENTS (Schedule C) | \$0.00 | \$600.00 |
| 7. TOTAL PAYMENTS (line 5+6) | \$3,199.66 | \$10,670.10 |
| CASH SUMMARY | | |
| 8. CASH BALANCE AT BEGINNING OF PERIOD (From last report) | \$5,909.56 | |
| 9. PLUS TOTAL RECEIPTS THIS PERIOD (line 4 above) | \$1,497.23 | |
| 10. MINUS TOTAL PAYMENTS THIS PERIOD (line 7 above) | \$3,199.66 | |
| 11. CASH BALANCE AT END OF PERIOD | \$4,207.13 | |
| OTHER ACTIVITY | | |
| | TOTAL FOR THIS PERIOD | TOTAL FOR CAMPAIGN |
| 12. IN-KIND CONTRIBUTIONS (Schedule A-1) | \$0.00 | \$0.00 |
| 13. TOTAL UNPAID DEBTS AT END OF PERIOD (Schedule D) | \$0.00 | |
| 14. TOTAL LOAN BALANCE AT END OF PERIOD (Schedule C) | \$0.00 | |
| FOR PARTY CANDIDATES ONLY: | | |
| CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (Included in line 1A after primary election) | | |

21-A M.R.S.A. §1020-A. FAILURE TO FILE ON TIME

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[1995, c. 483, §15 (NEW) .]

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD) .]

B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD) .]

[2009, c. 190, Pt. A, §13 (AMD) .]

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[2011, c. 389, §22 (AMD); 2011, c. 389, §62 (AFF) .]

4. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2007, c. 443, Pt. A, §22 (AMD) .]

5. Maximum penalties.

[2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4; [2011, c. 389, §23 (AMD) .]

A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §24 (NEW) .]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §25 (AMD) .]

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; [2003, c. 628, Pt. A, §4 (AMD) .]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (AMD) .]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

[2011, c. 389, §§23-25 (AMD) .]

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice by certified mail to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be

sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. The notice must be sent by certified mail. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2009, c. 302, §5 (RPR) .]

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §6 (AMD) .]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[2007, c. 443, Pt. A, §25 (AMD) .]

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (NEW) .]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (NEW) .]

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §7 (RPR) .]

SECTION HISTORY

RR 1995, c. 1, §10 (COR). IB 1995, c. 1, §15 (AMD). RR 1995, c. 2, §38 (COR). 1995, c. 483, §15 (NEW). 1995, c. 625, §B5 (AMD). 1999, c. 426, §§32,33 (AMD). 1999, c. 729, §5 (AMD). 2001, c. 470, §§7,8 (AMD). 2001,

c. 470, §11 (AFF). 2001, c. 714, §PP1 (AMD). 2001, c. 714, §PP2 (AFF). RR 2003, c. 1, §14 (COR). 2003, c. 302, §4 (AMD). 2003, c. 448, §4 (AMD). 2003, c. 628, §§A3-6 (AMD). 2007, c. 443, Pt. A, §§21-25 (AMD). 2009, c. 190, Pt. A, §§13, 14 (AMD). 2009, c. 302, §§5-7 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 366, §6 (AMD). 2011, c. 389, §§22-25 (AMD). 2011, c. 389, §62 (AFF). MRSA T. 21-A, §1020-A, sub-§4 (AMD). MRSA T. 21-A, §1020-A, sub-§5 (AMD).

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